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October 27, 2003

Hon. Barbara Carey-Shuler, Ed.D.  
Chairperson  
Miami-Dade Board of County Commissioners  
111 NW 1<sup>st</sup> St. Suite 220  
Miami, FL 33130

RE: IRP Complaint A2002.049 – NAACP and the Miami Times (SI 2002-0025 - Macklin)

Dear Dr. Carey-Shuler:

Enclosed is the final report of the Independent Review Panel (IRP) regarding the MDPD investigation and findings concerning the police shooting of Eddie Lee Macklin on Martin Luther King Day 2002. It includes the IRP Disposition as well as the responses of State Attorney Katherine Fernandez Rundle, NAACP President Dr. Bradford Brown and MDPD Director Carlos Alvarez.

The Independent Review Panel found that failure to address the tactical decision to draw guns, contributes to the public perception that MDPD finds it acceptable for officers to draw guns in a crowded area when there is no imminent threat to public safety.

The Panel also found that MDPD took corrective action following the shooting in that MDPD provided officers with additional training designed to teach officers to avoid danger, specifically not placing oneself in front of a car, and RID is no longer deployed for the Martin Luther King Day Parade.

This is a tragic incident but it would be a greater tragedy if the lessons learned are not shared with police recruits. I am relieved to read the following comment from Director Alvarez: "In addition to the actions already taken by the MDPD, we will use the facts of this case in training involving tactics, mission articulation, decision making and shooting policy."

Sincerely,

Riley Davis,  
Chairperson

RD:cb  
Enclosure  
c: George Burgess, County Manager

# Disposition of the Independent Review Panel

Complainant: NAACP and the Miami Times

Date: September 29, 2003

IRP Case: A 2002.049

MDPD Case: SI 2002-0025



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The Independent Review Panel met on September 25, 2003 for the purpose of publicly reviewing the Miami-Dade Police Department investigation of the police shooting of Eddie Lee Macklin. The following represents the findings of the Panel:

## **A. Incident**

On Martin Luther King (MLK) Day, January 21, 2002, the parade ended in Martin Luther King Park (NW 62 St. and 32 Ave.) where the celebration continued. At approximately 6 PM, while patrolling the area, Robbery Intervention Detail (RID) Officer David Riley identified a stolen vehicle driven by Eddie Lee Macklin. The vehicle was stuck in heavy traffic at NW 22 Ave. and 64 St. Three passengers were in the vehicle with Mr. Macklin. Five RID officers approached the stolen vehicle on foot, due to the heavy traffic. With guns drawn, they announced they were police officers and ordered the occupants to exit the vehicle. The occupants did not obey the officers' orders.

At this time the stolen vehicle was blocked by a truck. When the truck moved forward, Mr. Macklin accelerated. Witness statements indicate the vehicle driven by Mr. Macklin either hit Officer James Johns, causing the officer to fall onto the hood of the vehicle or the officer jumped on the hood. Mr. Macklin continued to accelerate. While on the hood of the vehicle, Officer Johns fired one shot into the windshield. The shot hit Mr. Macklin in the chest and killed him.

## **B. Complaint**

NAACP President Dr. Bradford Brown requested that the Independent Review Panel (IRP) review the reports and actions taken as a result of this shooting, because the NAACP has "serious questions concerning the police tactics and procedures used." Prior to that, an editorial in the January 23-29, 2002 edition of the Miami Times urged the Independent Review Panel to fully investigate this case. The editor's concern was "the absolute and total disregard for the lives of bystanders... There were literally hundreds of people in the vicinity of the shooting."

## **C. Summary of Undisputed Facts**

### **The Scene**

1. Robbery Intervention Detail (RID) officers were assigned to patrol the area due to previous crime and crowd control problems at the Martin Luther King Day parade.
2. There were hundreds of pedestrians and heavy traffic in the vicinity following the termination of the parade.
3. Eddie Lee Macklin was in the area, driving a stolen car and committing a felony.<sup>1</sup>

### **The Takedown**

4. There was a conversation over a police radio frequency among the officers and their sergeant about the stolen vehicle.
5. The officers' communication regarding stopping the stolen vehicle was on a radio frequency that was not recorded.
6. The officers were dressed in clothing that clearly identified them as Police Officers.
7. The officers approached the stolen vehicle with guns drawn.
8. The officers ordered the occupants of the vehicle to exit the car.
9. The occupants acknowledged they knew police officers were telling them to get out of the car.
10. The occupants did not comply with the officers' commands.

### **The Shooting**

11. Mr. Macklin accelerated in the direction of Officer James Johns, instead of stopping, and attempted to flee.
12. Officer Johns ended up on the hood of the vehicle.
13. Mr. Macklin accelerated while Officer Johns was on the hood of the vehicle screaming for him to stop.
14. Officer Johns shot once through the windshield, mortally wounding Mr. Macklin.

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<sup>1</sup> FS 812.14 (1) (a) "A person commits any theft if he or she knowingly obtains or uses... the property of another with intent to...appropriate the property to his or her own use or to the use of any person not entitled to the use of the property."

#### **D. State Attorney's Office Disposition**

- The shooting was justified under State Law. The State Attorney's Office Closeout Memorandum states: "Officer Johns was both attempting to arrest a fleeing felon and use the force necessary to protect himself against the continuing threat of death or serious bodily harm."
- A footnote in the memorandum advises that "...even if Officer Johns was not in fear of imminent death or great bodily harm, the law in this state provides that he still could have been justified in using deadly force even if the sole reason was to effectuate the arrest of a felon fleeing from justice. FS 776.05(3)."

#### **E. Miami-Dade Police Department Disposition**

- Mr. Macklin "jeopardized himself, his friends, the officers, and the innocent members of our community who were attending the parade."
- Officer Johns "had every right to protect himself and was therefore justified in firing his weapon into the vehicle in an effort to stop the car. This shooting was justified, lawful and proper, RID Officer Johns is **EXONERATED**."

#### **F. Findings of the Independent Review Panel**

1. Officer James Johns placed himself in danger when he walked between the stolen vehicle and truck, in front of the vehicle, on his way to the passenger side of the stolen vehicle.
2. The MDPD file is silent on the accountability of the officers and their chain of command for the tactics used to approach the stolen vehicle.
3. The MDPD Shooting Investigation did not address the officers' decision to approach the stolen vehicle with weapons drawn.
4. The MDPD Disposition Panel finding that "This shooting was justified, lawful and proper," without addressing the tactical decision to draw guns, contributes to the public perception that MDPD finds it acceptable for officers to draw guns in a crowded area when there is no imminent threat to public safety.
5. There is no documentation of the relevant decision-making process regarding the use of guns because the conversation between the officers and their supervisor was not recorded.
6. There was mission confusion, if the true mission was Special Events related crowd control and crime suppression. The specific RID mission at the parade was not clearly coordinated with Special Events Command. There is no evidence that Special Events Command was aware of the RID decision to take down the stolen car.

7. MDPD took corrective action following the shooting:
  - MDPD provided officers with additional training designed to teach officers to avoid danger, specifically not placing oneself in front of a car.
  - MDPD began taping the frequency on which officers communicate with each others.
  - RID was not deployed for the MLK Parade this year.
8. Many in the community consider that the actions of RID, aka “The Jump Out” Squad, undermines the Community Oriented Policing efforts of MDPD.

#### **G. Panel Recommendations**

1. That MDPD articulate and publicize all constructive changes it made in policy and practice subsequent to the Macklin shooting.
2. That MDPD restructure shooting investigation reports to include a review of mission articulation to officers on the street, review of supervisory decision making and post shooting policy and practice failure assessment.
3. That MDPD utilize this case for training purposes to help prevent similar tragic events in the future.
4. That MDPD address, in writing, the appropriateness of the tactics used by the officers, in consultation with their sergeant, to respond to the stolen car stuck in traffic in a crowded area.
5. That the State Attorney, before saying a shooting was ‘justified,’ take into consideration how that word can be inflammatory to the public that takes the events that led to the shooting to not be justified.



## STATE ATTORNEY

ELEVENTH JUDICIAL CIRCUIT OF FLORIDA  
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**KATHERINE FERNANDEZ RUNDLE**  
STATE ATTORNEY

TELEPHONE (305) 547-0100

October 14, 2003

Mr. Eduardo I. Diaz, Ph.D.  
Executive Director  
Independent Review Panel  
140 West Flagler Street  
Suite 1101  
Miami, FL 33130-1561

Dear Mr. Diaz:

Thank you for your letter dated September 30, 2003. I have spoken with Don Horn, and he has advised that he will be discussing with the other Chief Assistants the suggestions you e-mailed to him.

Also, as Don Advised the CRB at the meeting he attended on September 25, 2003, our Police Shooting Review Team had already decided to modify the language it uses in its closeout memos. The phrase we use now is "legally justified." Our hope is that this will help address some of the issues and concerns raised in your report.

Sincerely,

KATHERINE FERNANDEZ RUNDLE  
State Attorney

KFR:apm

## **Comments on Macklin Case**

**Bradford E. Brown, Ph.D., President Miami-Dade NAACP**

**October 14, 2003**

The recommendations in this report are sound and hopefully will be followed. Does the IRP keep a report card on the degree which its recommendations are adopted? If not I would suggest that it be done and then published (at least on a web site) on a regular basis.

There is one statement by the Police that I find misleading. They state that Mr. Macklin was driving a stolen car and committing a felony. The footnote states that it is a felony to knowingly drive a stolen vehicle. Mr. Macklin may indeed have been committing a felony but there would be no way for the officers to know that at the time a decision was made to take down the car.

I also find it disappointing that the strongly worded findings of the committee were not adopted by the full panel. The committee concluded that a policy violation was made when the officers approached the vehicle with drawn guns. The NAACP supports that conclusion. I would hope that the full committee would at least state their reasons for dropping this. I find no police rebuttal to this statement that might shed light on the rational. The full report also dropped the finding that the drawing of the firearms placed everyone in unnecessary danger. This is not to conclude that officers should not approach a stolen vehicle with drawn guns but rather that the location and timing of the take down was inappropriate and placed not only the occupants and the officers at risk (which is always the case) but unnecessarily hundreds of innocent bystanders and from the NAACP's point of view was a callous disregard for well being of a predominantly Black crowd in Liberty City.

October 15, 2003



## Metro-Dade Police Department

Director's Office  
9105 N.W. 25th Street Miami,  
Florida 33172



An Internationally  
Accredited  
Police Service

Eduardo I. Diaz, Ph. D.  
Independent Review Panel  
140 W. Flagler Street Suite  
1101 Miami, Fl. 33130-1561

Dear Dr. Diaz:

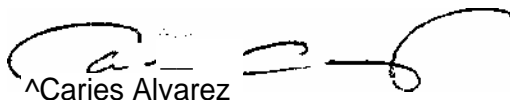
This is in response to the findings and recommendations of the Independent Review Panel (IRP) in Complaint IA 2002.049, concerning a police shooting. As you are aware, the goal of the Miami-Dade Police Department (MDPD) is to avoid all shooting situations by working with the community to ensure compliance with the law.

Chapter 776 of the Florida Statutes is the law which governs the use of force, including deadly force such as a shooting, by a police officer or a civilian. Police officers are also governed by departmental policy, which is more restrictive than Florida law. As you indicated in your letter, the State Attorney's investigation and the MDPD Professional Compliance Bureau's investigation found that the shooting was justified. There was no violation of state law or departmental policy.

The IRP findings describe concerns about the decision to make a felony arrest at that location, tactics, and the fact that officers approached the vehicle with guns drawn. These concerns can be addressed by a review of Section 776.05 of the Florida Statutes, as well as departmental policy and corrective action taken by MDPD. These issues were also addressed in the State Attorney's police shooting memorandum. The MDPD is always receptive to input from the community and from organizations such as the IRP, which can assist us in improving the services we provide. In addition to the actions already taken by the MDPD, we will use the facts of this case in training involving tactics, mission articulation, decision making and shooting policy. The MDPD will also publicize or share any changes in policy or procedure with the community.

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Sincerely,

  
^Caries Alvarez  
Director





THE VOICE OF LAW ENFORCEMENT

**DADE COUNTY POLICE BENEVOLENT ASSOCIATION, INC.**

November 18, 2003

Hon. Barbara Carey-Shuler, Ed.D.  
Chairperson  
Miami-Dade Board of County Commissioners  
111 NW 1<sup>st</sup> St., Suite 220  
Miami, FL 33130

Dear Dr. Carey-Shuler:

Enclosed is an analysis by the Dade County Police Benevolent Association (PBA) regarding the Independent Review Panel's (IRP) report on the Eddie Lee Macklin case. After a thorough review of the incident which led to the shooting, the officer involved was exonerated by the Miami-Dade Police Department and the State Attorney's Office. The Department found that the officer did what was necessary to protect the lives of innocent people as well as his own. We concur with the findings of the Police Department and the State Attorney's Office that the shooting was justified, lawful and proper.

The IRP report questions the officers' decision to approach the stolen vehicle with weapons drawn and calls for accountability. Ironically, however, there is no mention of Eddie Lee Macklin's accountability and his decision to accelerate the vehicle and to continue doing so even after having struck an officer. Faulting officers for performing their duties serves no purpose other than to mislead the community and warp public perception. I find it extremely disturbing that such rhetoric is so irresponsibly presented by a panel that knows little about law enforcement, much less tactical maneuvers.

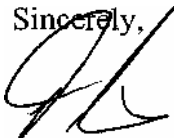
In reading the IRP's report, one has to wonder what the true intent was. The truth of the matter is that in this situation many people's lives, including those of the officers, were threatened by the actions of Eddie Lee Macklin. It appears that the IRP and Eduardo Diaz others would only have been satisfied if the officer had been killed. After all, he did have his weapon drawn. Imagine police officers, who are charged with the task of protecting this community at the risk of their own lives, having the nerve to approach a suspected felon with his weapon drawn! What were they thinking? Should they just have strolled up to the vehicle and ever so sweetly asked the driver to please get out, if it's not too much bother, so that they can, maybe, perhaps, enforce the laws that maintain the civility of this community. So long as no weapons are drawn by the good guys, everyone is happy. It is unfortunate that reality doesn't quite work that way, and officers' lives are routinely threatened by those who choose to break the law.

When officers are attacked, they must respond. We, as a community, should not discourage their ability to do so. How can we expect, rather demand, officers to protect us when we impede their ability to protect themselves? At what point does this community say enough is enough? We will not tolerate needless attacks on our law enforcement officers. When we, as a community, express our intolerance of such blatant disregard for those who risk their lives daily for us, then maybe officers will not be called upon to look the other way when a crime is being committed. Succumbing to baseless cries erodes the fabric that holds this community together.

The IRP's report is laden with inaccuracies and misleading information. The report encourages police departments everywhere to adopt a policy of not enforcing the laws. After all, the IRP does suggest that officers not place themselves in danger. Maybe I'm missing the point, but isn't police work in and of itself dangerous? The only way for a police officer to *not* place him or herself in danger is to change careers. The minute police officers pin on a badge and walk out the door, they step into danger. To believe otherwise is naive. To expect otherwise is just plain ignorant.

The PB A will not sit idly by as the names of good officers are smeared by mal-intended individuals. To that end, and in an effort to correct the IRP's bias, we have compiled our own detailed analysis of their report with the expectation that it will clarify some of the issues it clouds. Thank you for your attention to this matter. Please feel free to call me if you have any questions or would like to further discuss the issue.

Sincerely,



John Rivera  
President

cc: Carlos Alvarez, Director Miami-Dade Police Department  
Alex Penelas, Mayor  
Board of Miami-Dade County Commissioners  
Independent Review Panel

Enclosures  
JR:bgt



## DADE COUNTY POLICE BENEVOLENT ASSOCIATION, INC.

### A. Incident (FACTS)

- a. Eddie Lee Macklin, of his own free will, chose to commit a crime by stealing a car. Stealing a car is a third degree felony.
- b. Eddie Lee Macklin, of his own free will, chose to drive that stolen vehicle to the site of the Martin Luther King Day (MLK) parade on January 21, 2002.
- c. Miami-Dade Police Department (MDPD) officers, including Officer James Johns, attempted to enforce the law and properly attempted to conduct a lawful stop of the stolen vehicle driven by Eddie Lee Macklin.
- d. Eddie Lee Macklin, of his own free will, chose to strike MDPD Officer James Johns with the vehicle. Officer Johns was serving the community and acting in a proper, heroic and lawful manner in his capacity as a law enforcement officer.
- e. A motor vehicle is a deadly weapon.
- f. After being struck by the vehicle (deadly weapon) driven by Eddie Lee Macklin, Officer Johns landed on the hood. Officer Johns continuously screamed for Eddie Lee Macklin to stop the vehicle.
- g. Eddie Lee Macklin, of his own free will, chose to accelerate knowing full well that a human being (Officer Johns) was on the hood of the vehicle Eddie Lee Macklin had stolen and was in full control of.
- h. Eddie Lee Macklin unnecessarily endangered the lives of Officer Johns, the other law enforcement officers, the innocent bystanders in the vicinity, the vehicle occupants and himself.
- i. Officer Johns, while acting in a lawful, heroic and proper manner was in fear for his life and the lives of others.
- j. Officer Johns, reacting in self-defense and in the protection of others, had no choice but to discharge his firearm thereby striking Eddie Lee Macklin.
- k. Eddie Lee Macklin first acted; then Officer Johns reacted appropriately.

1. Eddie Lee Macklin was not shot because he was driving a stolen vehicle; he was shot because of his callous disregard for human life and his use of a deadly weapon endangering the lives of many.
- m. Officer Johns has the right to defend and protect himself from harm, as does every American citizen. Additionally, Officer Johns has the duty and obligation to protect others.
- n. Officer Johns' reaction prevented Eddie Lee Macklin from using a deadly weapon to cause serious bodily injury and/or death to himself and others.
- o. Media responded and several individuals who are connected, directly or indirectly, to the IRP gave false and malicious statements which were used by the media for sensationalism. The IRP report echoes those false statements and accepts them as truths.

## **B. Complaint**

- a. The *IRP* supposedly received a request or complaint from the NAACP president, Bradford Brown, who has publicly displayed great disdain for law enforcement.
- b. The IRP claims it read an editorial in the Miami Times which suggested that the IRP look into the shooting citing improper and baseless comments.
- c. The IRP's willingness to publish distorted facts and memorialize untruths regarding the incident only serves to incite, not unite nor inform justly.

## **C. Summary of Undisputed Facts**

The IRP does properly list the facts under "The Scene, The Takedown, and The Shooting" but more appropriate headings would have been "The Scene, The Arrest, and The Attempted Murder of Officer Johns."

## **D. State Attorney's Office Disposition**

- a. The findings of the Miami-Dade State Attorney's Office were legally correct and the appropriate conclusion presented.
- b. If there had been a speck of opportunity to indict the officer, Ms. Fernandez Rundle would have done so if for no other reason than political gain. Her disdain for law enforcement is at the very minimum at par with that of the IRP.

## **E. Miami-Dade Police Department Disposition**

- a. MDPD findings were exactly on point when they remarked "Mr. Macklin jeopardized himself, his friends, the officers, and the innocent members of our community who were attending the parade."
- b. MDPD was again exactly on point when they remarked "Officer Johns had every right to protect himself and was therefore justified in firing his weapon into the vehicle in an effort to stop the car. This shooting was justified, lawful and proper."
- c. MDPD was exactly on point when they **EXONERATED** Officer Johns after conducting a detailed and in-depth investigation.

#### **F. Findings of the Police Benevolent Association**

- 1. Officer James Johns placed himself in danger the very moment he pinned on his badge and took an oath to serve and protect this community.
- 2. The Robbery Intervention Detail (RID) squads, one of which Officer Johns was assigned to, perform their duties well, diligently and faithfully and are responsible for a significant decrease in crime in the areas they patrol.
- 3. If Officer Johns had not approached the stolen vehicle with his weapon drawn, Eddie Lee Macklin would likely have been successful in injuring and/or killing Officer Johns. Innocent bystanders would also have been seriously injured and/or killed.
- 4. County funds spent on the IRP are better spent elsewhere. The reports and findings of the IRP are nothing more than a feeble attempt to justify their existence and only serve to incite through baseless and unfounded rhetoric.
- 5. The IRP report encourages crime and calls for law enforcement officers to ignore their duties by not enforcing the laws. It is an insult for law abiding citizens and for all victims of crime.
- 6. The IRP is silent as to two very clear and simple facts:
  - a. Eddie Lee Macklin was committing a violent felony and was responsible for the outcome of his actions.
  - b. Officer James Johns performed his duties, as sworn to do, in a lawful, heroic and proper manner.
- 7. The IRP does not accept a finding of "lawful and proper" despite the fact they have no knowledge and/or training regarding tactical decisions.
- 8. The IRP has done, and continues to do, nothing to educate and inform individuals caught committing unlawful acts how to act appropriately when

approached by law enforcement officers who are performing their duties and protecting the community.

9. It is the IRP who continues to be "mission confused." If they are out to seek truth and justice, then they must do so by dealing with facts and evidence. To do otherwise is plainly un-American.
10. MDPD RID was working the MLK parade because of numerous complaints from law-abiding citizens regarding crimes being perpetrated on the local community. The IRP does not have the proper training and/or knowledge to question MDPD's policies and procedures with respect to enforcing the laws and ensuring public safety.
11. Many law-abiding citizens consider that the actions of Eddie Lee Macklin displayed a reckless and callous disregard for their safety and of the officers entrusted to protect them.
12. The IRP's reference to the RID squad as "the Jump Out" squad clearly displays their disdain and disrespect for law enforcement officers and the dangerous job they perform.

#### **G. Dade County PBA Recommendations**

1. The IRP should cease from pandering to organizations, groups or persons whose baseless accusations are divisive and irresponsible.
2. The IRP should cease their editorial type of reports and not deviate from facts and the law.
3. The IRP should address, in writing, the appropriateness of Eddie Lee Macklin's decision to: steal a car; ignore law enforcement officers performing their duties; accelerate the vehicle in a crowded area; use the vehicle as a deadly weapon and purposely strike Officer Johns with it; ignore the fact that there was a live human being on the hood of the stolen vehicle begging for him to stop; continue accelerating despite the number of innocent bystanders; and, endanger the lives of all people in the vicinity including citizens, law enforcement officers, the occupants of the stolen vehicle and his own.
4. The IRP should cease from inciting and soliciting complaints as a way to justify their existence.
5. The IRP should be monitored and sanctioned when they deviate from their intended purpose.
6. The IRP should be held liable when they exceed their authority, go outside the boundaries of the law and/or mislead the public.

7. Background checks of all panel members and employees of the IRP should be conducted and published for public knowledge.
8. In an attempt to be balanced, the IRP should make the public aware of the recent changes to the law regarding the ability of law enforcement officers to bring civil suits against those who make false accusations against them.
9. Complaints against the Executive Director of the IRP should not be investigated by the Executive Director. That course of action is inflammatory to the public that believes in a system of checks and balances.